

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on March 24, 2005. Claims 1-20 are pending in this application. Claims 12-20 have been withdrawn previously. In the Office Action, Claim 3 is objected to; Claim 8 is rejected under 35 U.S.C. §112, second paragraph; Claims 1-8 and 10-11 are rejected under 35 U.S.C. §102; and Claim 9 is rejected under 35 U.S.C. §103. In response, Claims 1, 3, 8 and 11 have been amended, and Claim 10 has been canceled. This amendment does not add new matter. In view of the amendments and/or for the response set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 3 is objected to for being grammatically incorrect and confusing. Claim 3 has been amended to correct the informalities cited by the Patent Office. Accordingly, Applicants respectfully request that the objection to Claim 3 be withdrawn.

In the Office Action, Claim 8 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the phrase “preferably” in Claim 8 is said to render the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Claim 8 has been amended to remove the phrase “preferably.” In view of the amendment to Claim 8, Applicants submit that this claim fully complies with 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejection of Claim 8 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-2 and 5-6 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,063,419 to Roche et al. (“*Roche*”). Claims 1-5, 7-8 and 10-11 are rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,235,320 to Daravingas et al. (“*Daravingas*”). Claims 1-5 are rejected under 35 U.S.C. §102(b) as anticipated by JP Publication No. 64-16553 to Naoki et al. (“*Naoki*”). Claims 1-2 and 5-6 are rejected under 35 U.S.C. §102(b) as anticipated by EO Publication No. 0853888 to Warendorf et al. (“*Warendorf*”). Applicants respectfully disagree with and traverse these rejections for at least the reasons set forth below.

Applicants have amended independent Claim 1 to recite, in part, a composite fermented milk product comprising a pot defining a filling volume and containing distinct adjoining masses

including a first mass comprising a fermented milk base or at least one flavoring composition and a second mass comprising a fermented milk base, wherein each mass has a global viscosity of between 4000 and 15000 mPa·s, and wherein the masses are of contrasting colors and similar viscosities and are arranged side by side such that there is no substantial migration of one mass into the other caused by each having similar viscosities. This amendment is supported in the specification, for example, at page 3, line 16 to page 4, line 3. In contrast, Applicants respectfully submit that the cited references fails to disclose every element of the present claims.

For example, *Roche* fails to disclose or suggest two compositions of similar viscosity where the viscosity prevents migration between the two compositions as required by the present claims. Instead, *Roche* discloses a yogurt base applied to the base of the container and a semi-liquid flavoring that can be applied via spray nozzle to the container walls. See, *Roche*, Claim 1; column 1, lines 30-36; column 2, lines 1-5. The semi-liquid flavoring cannot have a viscosity similar to the yogurt base or else it would be incapable of being applied via a spray nozzle. Further, the *Roche* reference provides no evidence that the semi-liquid flavoring has a similar viscosity to the yogurt base.

Daravingas fails to disclose or suggest two compositions that both have viscosities between 4000 and 15000 cps (cps equivalent to mPa·s) as required by the present claims. Instead, *Daravingas* discloses yogurt layers with finished viscosities above 20,000 cps, which teaches away from the present claims. See, *Daravingas*, Claim 1 and column 4, lines 20-27. Similarly, *Naoki* fails to disclose or suggest two compositions that both have viscosities between 4000 and 15000 cps. Although *Naoki* discloses a mix of different yogurt masses, the Patent Office offers no clear evidence that *Naoki* discloses two compositions having similar viscosities greater than 4000 cps, wherein similar viscosities prevent migration of one composition into the other as required by the present claims.

Warendorf fails to disclose or suggest different compositions having similar viscosities between 4000 and 15000 cps, arranged side be side, that do not allow substantial migration between the compositions as required by the present claims. Instead, *Warendorf* uses the synergistic properties of pectin and alginate to form a film around the fruit composition, allowing the composition to maintain its shape during pipe transport and filling. See, *Warendorf*, page 2, lines 16-41. This film does not have a similar viscosity to the milk-based component or the fruit

composition that the film contacts. Further, although the fruit preparation may maintain shape during processing, *Warendorf* never discloses that this fruit film will prevent substantial migration between the fruit composition and milk based component.

For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2-8 and 10-11 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited references. Accordingly, Applicants respectfully request that the rejections of Claims 1-8 and 10-11 under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claim 9 is rejected under 35 U.S.C. §103 as being unpatentable over *Daravingas* in view of *Warendorf*. Applicants respectfully submit that the patentability of Claim 1 renders moot the obviousness rejection of Claim 9. In this regard, the cited art fails to teach or suggest the elements of Claim 9 in combination with the novel elements of Claim 1.

Further, Applicants respectfully submit that there is no suggestion or motivation to combine the cited references to obtain the present claim. *Daravingas* is entirely directed to multiple layered products consisting only of yogurt bases. See, *Daravingas*, column 2, lines 15-27. By contrast, *Warendorf* is entirely directed to a single milk-based component with embedded, gelatin-stabilized, fruit composition. See, *Warendorf*, Abstract. Furthermore, *Warendorf* fails to disclose or suggest that its milk-based component can be embedded with a milk-based fruit preparation to achieve a multiple layered milk-base product, which is more consistent with the multiple yogurt bases in *Daravingas*. Thus, there is no direction provided in the cited references suggesting how the references should be combined to obtain the present claims.

Applicants also respectfully submit that, even if combinable, the cited references do not disclose all the claimed elements. As discussed earlier, *Daravingas* and *Warendorf* fail to disclose or suggest using two compositions that both have similar viscosities between 4000 and 15000 cps as required by the present claims. For the reasons discussed above, the combination of *Daravingas* in view of *Warendorf* does not teach, suggest, or even disclose Claim 9, and thus, fails to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claim 9 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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